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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,404	09/29/2003	Michael A. Kusenko	P03-11	2403
25759	7590	02/22/2006	EXAMINER	
JOHN J. ELNITSKI, JR. 225 A SNOWBIRD LANE BELLEFONTE, PA 16823			KRAMER, NICOLE R	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 02/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/605,404

Applicant(s)	
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KUSENKO, MICHAEL A.

Examiner

Nicole R. Kramer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5 and 7-9 is/are rejected.
- 7) ☒ Claim(s) 2,4 and 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 3 and 7-9 rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication 2004/0044384 ("Leber et al.").

Leber et al. discloses an energy therapy device for stimulating energy flow along meridians. A therapy pad (100) is formed of a plurality of energy-emitting elements (102) arranged on a substrate (104), wherein the energy-emitting elements are electrically connected to each other via electrical connections (108) (see Fig. 2 and associated text at paragraph 0064). The energy-emitting elements (102) may be electrodes (see paragraph 0049), which are inherently electrically conducting pads. Further, Leber et al. discloses that the energy-emitting elements may be electrically connected to each other by point-to-point wiring (see paragraph 0055).

With respect to claims 3 and 8, Leber et al. discloses placing a first energy-emitting element 102 on the patient's back on a left side of the spine about midway

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between a tailbone and a waist of the body, and placing a second energy-emitting element 102 on the patient's back on a right side of the spine about midway between a tailbone and a waist of the body (see disclosed placement of the bottom therapy pad 700 in Fig. 7).

With respect to the intended placement of the electrically conducting pads in claims 7 and 9 (i.e., that the conducting pads are adapted to be placed at a particular location on the human body), Examiner notes that such recitations of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The therapy pad 100 that contains a plurality of energy-emitting elements 102 is capable of being placed over the particular patient locations of claims 7 and 9, and thus Leber et al. anticipates claims 7 and 9.

3. Claims 8-9 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication 2004/0176806 ("Markoll").

Markoll discloses two electrical conducting pads (signal generating units 11 and 12 are inherently electrically conducting pads) that are connected to each other via an electrical conducting wire (16). With respect to the intended placement of the electrically conducting pads in claims 8 and 9 (i.e., that the conducting pads are adapted to be placed at a particular location on the human body), Examiner notes that such recitations of the intended use of the claimed invention must result in a structural

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difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The device disclosed in Markoll is capable of being placed over the particular patient locations of claims 8 and 9, and thus Markoll anticipates claims 8 and 9.

In addition, the recitations that the claimed devices are “adapted for restoring energy along a [governing or central] meridian in a human body to its natural pathway” are also intended use recitations. The device disclosed in Markoll is capable of restoring energy along a meridian in a human body to its natural pathway and thus Markoll anticipates claims 8 and 9. Further, the recitations have not been given patentable weight because the recitations occur in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

4. Claims 8-9 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,178,357 (“Gliner et al.”).

Gliner et al. discloses two electrical conducting pads (electrode disks 20 are inherently electrically conducting pads) that are connected to each other via an electrical conducting wire (the electrodes are in electrical communication via lead line

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16). With respect to the intended placement of the electrically conducting pads in claims 8 and 9 (i.e., that the conducting pads are adapted to be placed at a particular location on the human body), Examiner notes that such recitations of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The device disclosed in Gliner et al. is capable of being placed over the particular patient locations of claims 8 and 9, and thus Gliner et al. anticipates claims 8 and 9.

In addition, the recitations that the claimed devices are “adapted for restoring energy along a [governing or central] meridian in a human body to its natural pathway” are also intended use recitations. The device disclosed in Gliner et al. is capable of restoring energy along a meridian in a human body to its natural pathway and thus Gliner et al. anticipates claims 8 and 9. Further, the recitations have not been given patentable weight because the recitations occur in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3, 5, and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,277,142 ("Pinter").

Pinter discloses a method for restoring energy in the human body to its natural pathway. Pinter discloses that an apparatus (20) that includes a plurality of conductive elements (22, 24, 26, 28, 30) are placed across predetermined regions of the organism (see Abstract). Multiple devices (2) are worn on the organism on reflex points or meridian termini (see col. 5, lines 35-40). Pinter discloses placing a first device over the belly button of the body (Examiner considers location 56 of Fig. 3 to be approximately over the belly button of the body), a second device at point on the left side of the body below the collar bone (approximately at location 54 of Fig. 3), and a third pad at point on the right side of the body below the collar bone (approximately at location 54 of Fig. 3). Pinter fails to specifically disclose that the position of the first, second, and third pads are held for about 2-3 minutes. It would have been obvious to one having ordinary skill in the art at the time of applicant's invention to hold the devices in place for as long as necessary, but not longer than necessary, in order to restore the energy flow in the human body to its natural pathway, since it has been held that discovering an optimum value (i.e., the amount of time to restore the energy flow in the human body to its natural

pathway) of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Examiner notes that the limitations of method claims 1, 3, and 5 that the methods are performed using a particular structural configuration have not been given patentable weight because the recitations occur in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). In addition, see rejection of claims 7-9 in which the particular structural configurations are considered obvious in view of the devices disclosed in Pinter.

With respect to claim 3, Pinter discloses placing a first device on the patient's back on a left side of the spine about midway between a tailbone and a waist of the body, and placing a second device on the patient's back on a right side of the spine about midway between a tailbone and a waist of the body (see disclosed placement of devices 20 at location 62 in Fig. 4).

With respect to claim 5, Pinter discloses placing a first device above a pubic bone on a right side of the body, and placing a second device above a pubic bone on a left side of the body (Examiner considers locations 46 of Fig. 2 to be approximately one inch above the pubic bone).

With respect to claims 7-9, Pinter fails to disclose that the devices (20) are connected to each other via an electrical conducting wire. However, Pinter discloses that the devices 20 are designed to receive energy that flows within the meridians of the patient, and transmit that energy to another reflex point in the vicinity of that or another meridian (see col. 7, lines 42-63). It would have been obvious to one having ordinary skill in the art at the time of applicant's invention to modify the device configurations disclosed in Pinter such that the devices are connected to each other via electrical conducting wires in order to improve the energy transmittal from one device located at the first reflex point to another device located along that or another meridian.

Allowable Subject Matter

7. Claims 2, 4, and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter: Examiner considers U.S. Patent No. 6,277,142 ("Pinter") to be the closest prior art of record. Pinter discloses that kinesiologists use muscle testing to discover energy imbalances that can affect an organism's health (see col. 2, lines 66-67). However, Pinter fails to disclose what the specific steps of any appropriate muscle tests are in order to determine potential energy imbalances. Applicant has disclosed that the muscle test of claims 2, 4, and 6 is a relatively simple test to determine if the polarity of the body is switched, where to place the body jumpers, and which configuration to use

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(see paragraph 0015). Since the disclosed muscle test provides a methodology for determining where to place the body jumpers and which configuration to use (that is, the muscle test isn't simply whether a potential energy imbalance exists in the patient), the claimed muscle test is disclosed as having criticality and thus Examiner deems claims 2, 4, and 6 to be allowable over the prior art of reference.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. Patent No. 6,132,452 is a CIP of U.S. Patent No. 6,277,142 (Pinter described above) and discloses an additional device for promoting energy flow in an organism that includes a metallic structure 102 which enhances energy transmittal between conductive units 20.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicole R. Kramer whose telephone number is 571-272-8792. The examiner can normally be reached on Monday through Friday, 8 a.m. to 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

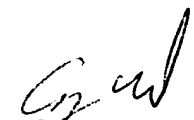
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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George Manuel
Primary Examiner